Remarks/Arguments:

I. Introduction

Upon entry of the present amendment, claims 1-16 will remain pending in this application. Claims 1-6 and 9-14 have been amended to clarify certain aspects of the invention. Based on the following remarks, Applicants respectfully request reconsideration and allowance of the pending claims.

II. Priority

The Examiner has requested that another certified copy of the priority document be submitted. The requested copy is enclosed

III. Specification and Claim Objections

The Examiner has objected to spelling errors in the specification and claims, all of which are corrected by the above amendments.

IV. 35 U.S.C. § 112

The Examiner has rejected claims 1-16 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner points out what are alleged to be some unclear areas in the claims, which appear to have arisen due to the translation of the application to English. Applicants believe that the above amendments address each of the Examiner's concerns.

V. 35 U.S.C. § 102

A. Adams

The Examiner has rejected claims 1, 4, 7, 9, and 12-15 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,135,950 to Adams. The Examiner states that the

Adams patent teaches a diet aid system that is a portable arrangement worn by a user to monitor daily food intake and activity level. The Examiner's position is that:

- Claim 1 - the Adams device has sensors (5, 6) attached to a body part of a user, a processor (2) and memory (3) that records inputs signals from the sensors, a comparator means (2) and a feedback means (display 8, alarm 9) for providing an output signal to the user;
- Claims 4 and 12 – Adams teaches monitoring movements to correspond with amount of food intake;
- Claims 5 and 13 – The Adams alarm (9) may be an auditory or visual alarm;
- Claims 6-7 and 14-15 – the Adams device is carried in a housing (7); and
- Claim 9 – Adams teaches a calibration mode for storing the user's eating and activity habits in memory (3).

Applicants respectfully traverse these rejections and request reconsideration and withdrawal thereof.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *See* MPEP § 2131; *Verdegaal Bros. V. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). The Adams patent, however, does not disclose each of the claimed elements.

1. Adams does not register movement of a limb; it tracks indirect body activity, not direct body activity.

First, the Adams patent does not measure actual movement and physical activity of the wearer's limbs. The Adams patent uses a heart rate sensor "to calculate the activity level of the person." *See* Adams, col. 3, lines 10-12. The heart rate sensor is not attached to a limb, and it does not track movement of the limb as presently claimed.

Additionally, the Adams heart rate sensor indirectly registers body activity; the patent does not suggest or disclose an arrangement that can "directly register ... movement of said [user's] limb," as Applicants presently claim. Heart rate can be affected by physiological factors and parameters other than a user's actual movements, such as nervousness, fear, sickness, etc. For example, because the Adams device tracks swallowing rate and heart rate, a user could be sitting in a meeting and (a) be drinking a lot of water (resulting in a high swallow rate) and (b) be feeling very nervous (resulting in a high heart rate), neither of which necessarily correlates to a high level of food intake or physical activity. In other words, the use of a heart rate sensor does not directly measure physical activity, as Applicants presently claim.

2 Adams measures food intake and registers a user's "normal routine."

The Adams patent measures the user's actual intake of food to create a baseline for measurement. "As the user goes about their normal daily routine, the sensor 5 will send data concerning the user's normal swallowing rate and their normal breathing rate to the CPU 2 along one channel of the sound chip 4." *See* Adams, col. 2, lines 23-27.

Applicants' invention, on the other hand, does not measure direct intake of food, but measures input signals based upon the user's actual movement. There is no feature of Applicants' invention that monitors food intake; the food intake is predetermined for a user, which is the claimed "preferred level of dieting."

Applicants' device is intended to measure physical movement of the user so that the user can adapt his or her physical body activity to a level that corresponds to the preferred dieting level, which is correlated to the user's BMI. The invention does not correlate the

levels being tracked to the user's normal routines as the Adams patent does – the user's normal routines are the precise activities that the present invention seeks to correct, so they are not useful as a baseline.

3. Adams sounds an alarm for food intake only, not for activity level.

In addition to measuring the user's actual food intake, Adams only sounds an alarm to alert the user about food intake. "If the food intake (for either an individual meal or the full day) is exceeded, an alarm 9 will sound and a pertinent message will appear in the display 8 to indicate this and the person will be able to take steps to correct the imbalance, such as by eating less or increasing physical activity." *See* Adams, col. 3, lines 17-22. The Adams device does not provide any output signals that alert the user to adapt physical activity to a certain level, as Applicants claim.

This is relevant because one reason for Applicants' purpose in monitoring the user's physical activity (as opposed to food intake) is described in the specification: "The modus operandus of the present invention is not to measure an absolute amount of work done or counting calories based on activity, but more to revise activity levels based on monitoring human beings' physical activity and simultaneously give them a feedback of the intensity of the level of physical activity using a learning paradigm." *See* Applicants' specification, page 5, lines 8-11.

Accordingly, at least because of these reasons, Applicants respectfully request the Examiner to reconsider and withdraw the rejections made over the Adams patent.

B. Lindqvist

The Examiner has rejected claims 1-3, 8-11, and 16 under 35 U.S.C. § 102(a) as being anticipated by WO 00/27274 to Lindqvist. The Examiner states that the Lindqvist application teaches a system for regulating the nutritional balance of a user, including monitoring the physical activity and food intake of the user using a device that has a sensor attached to a body part of a user, a processor with a memory, a comparator means and a feedback means. Applicants respectfully traverse this rejection and request reconsideration and withdrawal thereof.

It is again relevant to note that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *See* MPEP § 2131; *Verdegaal Bros. V. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). The Lindqvist application, however, does not disclose each of the claimed elements.

1. Lindqvist does not register movement of a limb; it tracks indirect body activity, not direct body activity.

The Lindqvist device tracks pulse frequency and/or blood pressure of the user, which, again, is an indirect measurement. *See* Lindqvist, page 4, lines 11-25. The reference does not suggest or disclose an arrangement that can "directly register ... movement of said [user's] limb," as Applicants presently claim. Moreover, although the measuring unit may be attached around the user's wrist by a band, the unit is not measuring the movement of the user's wrist, it is measuring the pulse rate at the user's wrist.

2. The user must input actual food intake into the Lindqvist device.

In order to use the Lindqvist device, the user needs to input information related to the food or drink type and quantity ingested, and the device calculates values related to the ingested quantity of energy. There are different buttons the relate to different types of food, e.g., a green button for vegetables and fruit, a yellow button for milk, meat and bread, and a blue button for water, etc. *See* Lindqvist, pages 8-9. The user controls his nutritional balance by marking the menu screen.

In other words, the Lindqvist device is merely a food tracking device. It does not have any feature that correlates to Applicants' claimed comparator means that is "adapted to compare said input signals [received from the at least one sensor that records physical movement] with predetermined stored movements within a provided resolution for said preferred level of dieting." Nor does it have a feedback means adapted to provide an output signal to the user alerting the user to adapt physical activity to a level that corresponds to the dieting level.

3. Lindqvist sounds an alarm for food intake only, not for activity level.

In addition to tracking the user's actual food intake, Lindqvist only sounds an alarm to alert the user about food intake. "The device may also comprise, for example, an alarm device, which is arranged to attend [warn?] the user about if he has not ingested an enough quantity of a necessary substance during a time period." *See* Lindqvist, page 10, lines 21-24. The Lindqvist device does not provide any output signals that alert the user to adapt physical activity to a certain level, as Applicants claim.

Accordingly, at least because of these reasons, Applicants respectfully request the Examiner to reconsider and withdraw the rejections made over the Lindqvist reference.

CONCLUSION

For at least the above reasons, Applicants respectfully request allowance of claims 1-16 and issuance of a patent containing these claims in due course. If there remain any additional issues to be addressed, the Examiner is urged to contact the undersigned attorney at 404.815.6147.

Respectfully submitted,

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